

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Advanced Transit Dynamics, Inc.,  
Plaintiff,  
v.  
Ridge Corporation,  
Defendant.

Case No. 15-cv-1877-BRO-MAN

**PROTECTIVE ORDER ENTERED  
PURSUANT TO STIPULATION OF  
THE PARTIES**

## 1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are expected by the parties to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Information designated under this Protective Order shall be used solely for the purpose of this litigation and not for any other purpose.

## II. DEFINITIONS

A.     “**Party**”: any party to *Advanced Transit Dynamics, Inc. v. Ridge Corporation*, Case No. 15-cv-1877-BRO-MAN, and any parent, subsidiary, or affiliate of a party of this Action, including all their officers, employees,

1 consultants, or agents, whose information is produced under this Agreed Protective  
2 Order.

3       B.     **“Action”**: *Advanced Transit Dynamics, Inc. v. Ridge Corporation*,  
4 Case No. 15-cv-1877-BRO-MAN.

5       C.     **“Disclosure or Discovery Material”**: all items or information,  
6 regardless of the medium or manner generated, stored, or maintained (including,  
7 among other things, testimony, transcripts, or tangible things) that are produced or  
8 generated in disclosures or responses to discovery in this matter.

9       D.     **“Highly Confidential – Outside Attorney Eyes Only”**: sensitive  
10 information of the Designating Party (or of a third party to whom the Designating  
11 Party owes an obligation of confidentiality), including but not limited to: (1) trade  
12 secrets under applicable law; (2) commercial information (such as business plans,  
13 business strategies, market plans, market and/or demographic research, market  
14 penetration, market share, advertising, negotiations, and license agreements); (3)  
15 financial information (such as budgeting, accounting, sales figures, and advertising  
16 expenditures); (4) business relationship information (such as information pertaining  
17 to potential and/or existing customers, competitors, suppliers, distributors,  
18 affiliates, subsidiaries, and parents); and (5) technical information (such as research  
19 and development information, lab notebooks, block diagrams, system level  
20 engineering documents, inventor notebooks and/or files, specifications and design  
21 documents, manufacturing documents, quality control/quality assurance documents  
22 and data, schematics, blueprints, CAD drawings and data, software, information  
23 relating the future products, non-public products, and the like), the disclosure of  
24 which to another Party or nonparty would create a risk of serious injury to the  
25 business or competitive interests of the Designating Party.

26       E.     **“Confidential”**: any and all non-public or other confidential and/or  
27 proprietary information that any Designating Party believes in good faith the  
28

1 disclosure of which would result in competitive injury, and which is not covered by  
2 the definition of "Highly Confidential – Outside Attorneys Only."

3 F. **"Receiving Party"**: a Party that or who receives Disclosure or  
4 Discovery Material from a Designating Party.

5 G. **"Designating Party"**: a Party or non-Party that or who designates  
6 information or items that it produces in disclosures or in responses to discovery as  
7 "Highly Confidential – Outside Attorney Eyes Only" and/or "Confidential."

8 H. **"Protected Material"**: any Disclosure or Discovery Material that is  
9 designated as "Highly Confidential – Outside Attorney Eyes Only" or  
10 "Confidential."

11 I. **"Outside Attorney"** or **"Outside Counsel"**: attorneys who are not  
12 employees of a Party but are specially retained to represent a Party in this Action  
13 and are counsel of record with the Court in this Action.

14 J. **"Expert"**: a person with specialized knowledge or experience in a  
15 matter pertinent to the litigation who has been specially retained by a Party or its  
16 counsel to serve as an independent expert witness or consultant in this Action.

17 K. **"Professional Vendors"**: persons or entities who or that provide  
18 litigation support services (*e.g.*, photocopying, videotaping, translating, preparing  
19 exhibits or demonstrations, organizing, storing, retrieving data in any form or  
20 medium, jury consulting, etc.) and their employees and subcontractors.

21 **III. SCOPE**

22 The protections conferred by this Order cover not only Protected Material (as  
23 defined above) but also any information copied or extracted therefrom, as well as  
24 copies, excerpts, summaries, or compilations thereof, plus testimony, conversations,  
25 or presentations by Parties or Counsel to or in court or in other settings that might  
26 reveal Protected Materials.

27 **IV. DESIGNATING PROTECTED MATERIAL**

1 Documents, information, materials, legal memoranda, expert statements and  
2 discovery responses, in whole or in part, may be designated under this Protective  
3 Order as follows:

4 A. The Designating Party shall designate material by placing a legend  
5 indicating the appropriate designation, such as "Highly Confidential – Outside  
6 Attorney Eyes Only" or "Confidential" on the material.

7 B. For testimony given in deposition, the parties shall have up to thirty  
8 (30) business days after receipt of the transcript to designate testimony as protected  
9 under this Agreed Protective Order. All transcripts shall be treated as designated  
10 "Highly Confidential – Outside Attorney Eyes Only" until thirty days after such  
11 receipt.

12 C. Transcripts containing Protected Material must be marked with the  
13 legend "Highly Confidential – Outside Attorney Eyes Only" or "Confidential," as  
14 appropriate, or some similar legend on either the cover of the transcript or the  
15 individual pages containing such Protected Material as instructed by the Party or  
16 non-party offering or sponsoring the witness and presenting the testimony. If a  
17 court reporter fails to properly label any transcript, all parties notified at or after the  
18 deposition of the designation are nevertheless bound by the designation provided.

19 D. For information produced in some form other than documentary, for  
20 any other tangible item, and for any documents produced natively, the Designating  
21 Party shall affix, in some prominent place on the exterior of the container or  
22 containers in which the information or item is stored, the legend "Highly  
23 Confidential – Outside Attorney Eyes Only" or "Confidential." If only portions of  
24 the information or item warrant protection, the Designating Party, to the extent  
25 practicable, shall identify the protected portions, specifying whether they qualify as  
26 "Confidential" or as "Highly Confidential – Outside Attorney Eyes Only."

27 **V. INADVERTENT FAILURE TO DESIGNATE**  
28

1        An inadvertent failure to designate qualified information or items as “Highly  
2 Confidential – Outside Attorney Eyes Only” or “Confidential” or an inadvertent  
3 incorrect designation of “Highly Confidential – Outside Attorney Eyes Only” as  
4 “Confidential” does not waive the Designating Party’s right to secure protection  
5 under this Order for such material. If material is designated as “Highly  
6 Confidential – Outside Attorney Eyes Only” or “Confidential” after the material  
7 was initially produced or if the Designating Party amends the designation from  
8 “Confidential” to “Highly Confidential – Outside Attorney Eyes Only”, the  
9 Receiving Party, on timely notification of the re-designation, must make reasonable  
10 efforts to ensure that the material is treated in accordance with the provision of this  
11 Order.

12 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

13        A Party that elects to challenge a Designating Party’s confidentiality  
14 designation must do so in good faith and must begin the process by conferring with  
15 the Designating Party. In the conferral, the challenging Party must explain the basis  
16 for its belief that the confidentiality designation was not proper and must give the  
17 Designating Party an opportunity to review the designated material, to reconsider  
18 the circumstance, and if no change to the designation is offered, explain the basis  
19 for the designation. A challenging Party may only seek judicial intervention upon  
20 completion of this process or upon establishing that the Designating Party is  
21 unwilling to participate in the meet and confer process in a timely manner. A party  
22 that elects to press a challenge to a confidentiality designation after considering the  
23 Designating Party’s justification may file and serve a motion that identifies the  
24 challenged material and sets forth in detail the basis for the challenge. Until a  
25 determination by the Court, the information in issue shall be treated as having been  
26 properly designated and subject to the terms of this Order. The Designating Party  
27 shall bear the burden of establishing the propriety of the challenged designation.  
28

1                   **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

2                   A.     Designated Material designated “Highly Confidential – Outside  
3     Attorney Eyes Only” or “Confidential” may only be disclosed by the Receiving  
4     Party to:

5                   1)     Outside Counsel of record for the parties to this Action, as well  
6     as partners, counsel, associates, agents, and regularly employed staff and  
7     supporting personnel of such counsel to the extent reasonably necessary to  
8     render professional services in this Action;

9                   2)     Persons who appear on the face of the Designated Material as an  
10    author, addressee, or recipient thereof or who otherwise have prior  
11    knowledge of the confidential aspects of the contents of the document or  
12    thing;

13                  3)     The Court and Court personnel (including stenographic  
14    reporters) and any necessary law clerk, paralegal, secretarial, clerical, and  
15    other court personnel;

16                  4)     Subject to Section 8 below, Experts (and employed assistants,  
17    secretarial, and clerical staffs of each such Experts) who are not employees  
18    of the Receiving Party and who are retained by a party or its attorneys of  
19    record in this action to assist in the preparation of the case, such as  
20    independent economic, accounting, or scientific experts or technical advisors,  
21    and to furnish technical or expert services in connection with this Action; and

22                  5)     Professional Vendors.

23                  B.     In addition, Designated Materials designated “Confidential” may also  
24    be disclosed to four (4) employees of the non-Designating Party who first sign the  
25    Undertaking attached as Exhibit A. Any such employees may only use such  
26    “Confidential” Designated Materials for the prosecution or defense of this Action  
27    and shall not otherwise use or disclose any such “Confidential” Designated  
28    Materials.

1           C. Nothing in this Agreed Protective Order shall preclude or impede  
2 Outside Counsel's ability to communicate with or advise their client in connection  
3 with this litigation only based on such counsel's review and evaluation of Protected  
4 Material, provided however, that such communications or advice shall not disclose  
5 or reveal the substance or content of any Protected Material other than as permitted  
6 under this Agreed Protective Order.

7           **VIII. PROCEDURES FOR APPROVING DISCLOSURE OF**  
8           **CONFIDENTIAL OR HIGHLY CONFIDENTIAL INFORMATION OR**  
9           **ITEMS TO EXPERTS**

10          A. Unless otherwise ordered by the Court or agreed to in writing by the  
11 Designating Party, a Party that seeks to disclose to an Expert, as defined in this  
12 Order, any information or item that has been designated "Highly Confidential –  
13 Outside Attorney Eyes Only" or "Confidential" first must make a written request  
14 and disclosure to the Designating Party that (1) sets forth the full name, business  
15 title, business address, and business profession of the Expert, (2) attaches a copy of  
16 the Expert's current Curriculum Vitae, (3) identifies any previous or current  
17 relationship (personal or professional) with any of the Parties or any entity that  
18 either the Receiving Party or Expert has reason to believe is affiliated with either of  
19 the Parties, (4) identifies (by name and number of the case, filing date, and location  
20 of the court) any litigation in connection with which the Expert has provided any  
21 professional services during the preceding four (4) years, and (5) identifies all the  
22 companies with which the individual has consulted or been employed within in the  
23 last four (4) years. If an Expert is unable or unwilling to provide the information  
24 described in parts (4) and (5), the Expert and Party must disclose that information  
25 has been withheld and participate in good faith conferrals regarding the nature and  
26 technology involved in the withheld disclosures so that the Designating Party is  
27 able to ascertain any potential confidentiality concerns. The Party must also serve  
28 the Undertaking attached as Exhibit A.

1           B.     A Party that makes a request and provides the information specified  
 2 above may disclose Designated Material to the identified Expert unless, within five  
 3 (5) business days of delivering the request and disclosures, the Party receives a  
 4 written objection from the Designating Party. A Party that serves a written  
 5 objection must set forth the grounds on which it is based.

6           C.     A Party that receives a timely written objection must meet and confer  
 7 with the Designating Party to try to resolve the matter by agreement within five (5)  
 8 business days of receipt of the objection. If no agreement is reached, the Party  
 9 seeking to prohibit the disclosure to the Expert may file a motion seeking a  
 10 protective order from the Court to do so. Such a motion must be filed within five  
 11 (5) business days of the failure to reach an agreement. If the Party seeking to  
 12 prohibit disclosure to the Expert fails to file such motion within five (5) business  
 13 days of the failure to reach such agreement, then the Party's objection to disclosure  
 14 thereof is waived. The Party seeking to make the disclosure of the subject  
 15 Designated Material to the Expert shall not disclose the material until the motion is  
 16 ruled upon by the Court and only if the Court denies the requested relief.

17           D.     Notwithstanding the timeline and procedure set forth in paragraphs  
 18 VIII(B)-(C) above, the Parties agree to work together in good faith to negotiate an  
 19 expedited expert disclosure and objection procedure for purposes of Plaintiff's  
 20 Motion for Preliminary Injunction.

21 **IX. DISCLOSURE OF SOURCE CODE**

22           The Parties do not currently anticipate a need for disclosure of source code,  
 23 but agree to negotiate provisions for inspection of source code should the need for  
 24 disclosure of source code arise.

25 **X. UNINTENTIONAL DISCLOSURE OF PRIVILEGED**  
 26 **INFORMATION**

27           A.     Counsel shall employ their best efforts to identify documents or  
 28 material protected by the attorney-client privilege, work-product doctrine, or any

1 other privilege and/or immunity prior to the disclosure of any such documents or  
2 material.

3       B. If, however, a Designating Party determines it has inadvertently  
4 disclosed information that the Designating Party believes is privileged or otherwise  
5 immune from discovery, the Designating Party shall in writing notify the Receiving  
6 Party of the claim, set forth the basis for the claim, and request that the item or  
7 items be returned or destroyed. If the Designating Party learns of the inadvertent  
8 disclosure during a deposition or court proceeding the Designating Party may notify  
9 the Receiving Party orally during the relevant proceeding. If such request is made  
10 no Party shall thereafter assert waiver of privilege or immunity with respect to the  
11 information.

12       C. The Receiving Party will, regardless of whether it agrees with or  
13 contests the Designating Party's claim of privilege, return or destroy the  
14 inadvertently produced documents or material, and all copies and derivations  
15 thereof, within five (5) business days of the Receiving Party's receipt of a written  
16 request for the return of the documents or material.

17 **XI. FILING PROTECTED MATERIALS UNDER SEAL**

18       Subject to the Federal Rules of Civil Procedure, the Local Rules, and the  
19 Electronic Case Filing ("ECF") Procedures Manual, all pleadings and other papers  
20 that are electronically filed with the Court and contain, refer to, or disclose  
21 information designated "Highly Confidential – Outside Attorney Eyes Only" or  
22 "Confidential" shall be filed with an application to file under seal. The parties will  
23 follow the procedures of Local Rule 5-4.2 and the Pilot Program Instructions to  
24 Attorneys--*Procedures for Filing Under Seal Documents* for all documents to be  
25 filed with the Court under seal. **The designation of any information, document,**  
**or thing as "Confidential," "Highly Confidential – Outside Attorney Eyes**  
**Only," or other designation(s) used by the parties, does not, in and of itself,**  
**create any entitlement to file such information, document, or thing, in whole or**

1       **in part, under seal. Accordingly, reference to this Protective Order (“Order”)**  
2       **or to the parties’ designation of any information, document, or thing as**  
3       **“Confidential,” “Highly Confidential – Outside Attorney Eyes Only,” or other**  
4       **designation(s) used by the parties, is wholly insufficient to warrant a filing**  
5       **under seal. In connection with non-dispositive motions, good cause must be**  
6       **shown to support a filing under seal.**

7       **XII. FINAL DISPOSITION**

8           A.       The restrictions on use of Designated Material set forth herein shall  
9       survive the conclusion of the litigation and, after conclusion of the litigation, the  
10      Court shall exercise jurisdiction for purposes of enforcing this Agreed Protective  
11      Order. California law shall govern interpretation and enforcement of this Order.

12           B.       Unless otherwise ordered or agreed to in writing by the Disclosing  
13      Party, within sixty (60) days after the final termination of this action, each Party  
14      must return or destroy all “Highly Confidential – Outside Attorney Eyes Only” and  
15      “Confidential” material and submit a written certification to the Disclosing Party  
16      that all such materials have been returned or destroyed. Counsel are entitled to  
17      retain copies of all pleadings, motion papers, transcripts, legal memoranda,  
18      correspondence, or attorney work product even if such material contain Designated  
19      Material but the obligations under this Agreed Protective Order will continue for  
20      those materials.

21       **XIII. PROSECUTION BAR**

22           Any attorney or agent who receives or reviews any information or documents  
23      designated as “Highly Confidential – Outside Attorney Eyes Only” and/or  
24      “Confidential” by any party other than his or her client shall not thereafter  
25      prosecute, supervise, or materially assist in the prosecution of any patent  
26      application, or otherwise in the amendment of any application and/or patent, related  
27      to the technology that is the subject matter of this lawsuit during the pendency of  
28      this case and for one year after the conclusion of this litigation. “Prosecution” as

1 used in this paragraph does not include post-grant review, ex parte reexamination,  
2 or *inter partes* review, with the understanding that no “Highly Confidential –  
3 Outside Attorney Eyes Only” and/or “Confidential” information of another Party  
4 from this litigation shall be used for any of those activities unless so permitted by  
5 written agreement of the Parties and a protective order entered in connection with  
6 those activities.

7 **XIV. THIRD PARTIES**

8 Any non-party shall also be entitled to the rights and protections provided to  
9 a Designating Party. A non-party that produces Disclosure or Discovery Material  
10 voluntarily, fails to object to a Party’s notice that it will produce non-party  
11 confidential information, or that produces Disclosure or Discovery Material  
12 pursuant to a subpoena or a court order, may designate such Material in the same  
13 manner as a Party (or a Party may make such designation on a non-party’s behalf),  
14 and shall receive the same level of protection under this Agreed Protective Order as  
15 any Party to this lawsuit. A non-party’s use of this Order does not entitle that non-  
16 party access to Material designated “Highly Confidential – Outside Attorney Eyes  
17 Only” and/or “Confidential” by a Party.

18 **XV. EXPERT DISCOVERY**

19 In accordance with Federal Rule of Civil Procedure 26(b), communications  
20 and exchanges between counsel and Experts (including testifying Experts),  
21 including without limitation those made in preparing drafts of expert reports, are  
22 not discoverable unless the Expert relies on any such communication to support his  
23 or her opinion. In addition, draft expert reports are not discoverable.  
24 Communications and exchanges between counsel and non-testifying Expert  
25 witnesses are also not discoverable. Neither Party shall seek non-discoverable  
26 Expert communications, exchanges, or draft reports.

27 **XVI. NO WAIVER OF PRIVILEGE**

28

1       Nothing in this Agreed Protective Order shall require production of  
2 information that a party contends is protected from disclosure by the attorney-client  
3 privilege, the work product immunity, or other privilege, doctrine, right, or  
4 immunity. Pursuant to Fed. R. Evid. 502(d), the production of a privileged or  
5 work-product-protected document is not a waiver of privilege or protection from  
6 discovery in this case or in any other federal or state proceeding. For example, the  
7 mere production of privileged or work-product-protected documents in this case as  
8 part of a mass production is not itself a waiver in this case or any other federal or  
9 state proceeding. A Designating Party may assert privilege or protection over  
10 produced documents at any time by notifying the receiving party in writing of the  
11 assertion of privilege or protection. In addition, information that contains privileged  
12 matter or attorney work product shall be immediately returned if such information  
13 appears on its face to have been inadvertently produced.

14 **XVII. MISCELLANEOUS**

15       A.      Any of the notice requirements herein may be waived, in whole or in  
16 part, but only in writing signed by the attorney-in-charge for the Party against  
17 whom such waiver will be effective.

18       B.      Nothing in this Order abridges the right of any person to seek  
19 modification by the Court or to seek further protective orders.

20       C.      No Party shall be required to identify on their respective privilege log  
21 any document or communication dated on or after the filing of the lawsuit, which  
22 absent this provision, the Party would have been obligated to so identify on said  
23 privilege log. The Parties shall exchange their respective privilege document logs  
24 at a time to be agreed upon by the Parties following the production of documents.

25       D.      If at any time documents containing Protected Material are subpoenaed  
26 by any court, arbitral, administrative or legislative body, or are otherwise requested  
27 in discovery, the person to whom the subpoena or other request is directed shall  
28 immediately give written notice thereof to every party who has produced such

1 documents and to its counsel and shall provide each such party with an opportunity  
2 to object to the production of such documents. If the Designating Party does not  
3 take steps to prevent disclosure of such documents within ten days of the date  
4 written notice is given, the Party to whom the referenced subpoena is directed may  
5 produce such documents in response thereto, but shall take all reasonable measures  
6 to have such documents treated in accordance with terms of this Agreed Protective  
7 Order. **Nothing in this Protective Order should be construed as authorizing a**  
8 **Receiving Party in this action to disobey a lawful directive from another court.**

9 E. By stipulation to the entry of this Agreed Protective Order, no Party  
10 waives any right it otherwise would have to object to disclosing or producing any  
11 information or item on any ground not addressed in this Agreed Protective Order.  
12 Similarly no Party waives any right to object, on any ground, to the admission of  
13 any of the material covered by this Order.

14 F. Ridge does not consent or submit itself to the jurisdiction of this Court.  
15 Ridge fully reserves its rights to challenge whether the Court has jurisdiction over  
16 Ridge. ATDynamics disagrees and submits that this Court has personal jurisdiction  
17 over Ridge for purposes of at least this action.

18  
19 **IT IS SO ORDERED.**

20  
21 DATED: August 3, 2015

22  
23  
24   
25 MARGARET A. NAGLE  
26 UNITED STATES MAGISTRATE JUDGE  
27  
28

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Advanced Transit Dynamics, Inc.,  
Plaintiff,  
v.  
Ridge Corporation,  
Defendant.

Case No. 15-cv-1877-BRO-MAN  
**UNDERTAKING OF [INSERT  
NAME]**

I, \_\_\_\_\_, state the following under penalties of perjury as provided by law:

I have been retained by \_\_\_\_\_ as an expert or consultant in connection with this case. / I am an employee of \_\_\_\_\_. I will be receiving “Highly Confidential – Outside Attorney Eyes Only” and/or “Confidential” information that is covered by the Court’s Protective Order dated \_\_\_\_\_. I have read the Court’s Protective Order and understand that the “Highly Confidential – Outside Attorney Eyes Only” and/or “Confidential” information is provided pursuant to the terms and conditions in that Order. I agree to be bound by the Court’s Protective Order.

I submit to the jurisdiction of the Court that issued the Protective Order for purposes of enforcing that Order. I give up any objections I might have to that Court's jurisdiction over me or to the propriety of venue in that Court.

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Date:

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### Signature

City and State where sworn and signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_